

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of:

Implementation of Pay Telephone
Reclassification and Compensation Provisions
of The Telecommunications Act of 1996

Petitioners' Alternative Rulemaking Proposal

CC Docket 96-128

**COMMENTS BY
THE SENTENCING PROJECT,
THE BRONX DEFENDERS, CENTER FOR COMMUNITY
ALTERNATIVES, THE CRIMINAL JUSTICE POLICY FOUNDATION,
EQUAL JUSTICE INITIATIVE, LEGAL ACTION CENTER, NAACP
LEGAL DEFENSE AND EDUCATION FUND, THE NATIONAL COUNCIL
OF LA RAZA, THE OSBORNE ASSOCIATION, THE REAL COST OF
PRISONS PROJECT, AND THE WOMEN'S PRISON ASSOCIATION**

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COMMENTS BY THE SENTENCING PROJECT, ET AL
REGARDING ALTERNATIVE RULEMAKING PROPOSAL

The Sentencing Project and ten others¹ submit these comments pursuant to the Public Notice issued by the Federal Communications Commission (“Commission”) on March 2, 2007, regarding the Alternative Rulemaking Proposal filed by Martha Wright et al. on March 1, 2007 (“Second Wright Petition”). The Sentencing Project submits these comments to alert the Commission of unequivocal research findings indicating the public interest in promoting telephone communications as a means of preserving closer ties between inmates and the family members from whom incarceration separates them. Studies uniformly show that prisoners who preserve close ties with their families and other intimate relations are more likely to desist from crime after their release. Indeed, one study observes that there is no “other research finding in the field of corrections which can approximate this record.” By reducing recidivism, the nurture of inmates’ social ties via reasonably accessible telephone communications serves the compelling public interest of making communities safer and more secure. The Sentencing Project shares this research in order to respectfully urge the Commission to adopt the proposals of the Second Wright Petition and establish

¹ The names of the organizations joining this comments appear on the cover page hereof. See point I, infra, for a description of the interest of each organization in the subject matter of this appeal.

benchmark rates for long distance prison inmate calling services, and to require prison telephone service providers to offer debit calling options.

I. THE INTEREST OF THE SENTENCING PROJECT AND JOINING ORGANIZATIONS

The Sentencing Project is a national non-profit organization engaged in research and advocacy regarding criminal justice policy. It promotes policies and practices that facilitate family connections during a period of incarceration and that contribute to the reentry process from prison to the community.

The Bronx Defenders is a holistic public defender office that brings together interdisciplinary work groups combining criminal defense and civil lawyers, client advocates, investigators, and family court advocates in order to address not just an immediate criminal case, but a host of issues that drive its clients into the criminal justice system. Based on its work with clients, the Bronx Defenders believes that staying connected to families is a significant support for clients while they are incarcerated, and a critical component of their reentry. The Bronx Defenders does not believe its clients should be charged more than the average consumer to call their loved ones.

The Center for Community Alternatives ("CCA") is a not-for-profit organization founded in 1981 as New York State's first alternative-to-incarceration agency. CCA provides reentry services and a range of alternative to incarceration programs for youth and adults who would otherwise be incarcerated. These

services are rooted in the understanding that successful reintegration requires connections to one's community and one's family. Through these services, as well as policy work, training, and technical assistance, CCA fosters individual transformation, system improvements, and community and professional support for reintegration.

The Criminal Justice Policy Foundation's mission is to educate the public about the criminal justice system. The Foundation provides information and advice to policy makers, criminal justice professionals, and the public through consultation, education programs, conferences, publications, the news media and the Internet. It works for a criminal justice system that is honest, fair and effective to be one of America's most important institutions. America's national life depends upon our safety and liberty, which in turn depend upon the integrity and effectiveness of our justice system.

The Equal Justice Initiative of Alabama ("EJI") is a private, non-profit organization that provides legal assistance to death row prisoners, people wrongly convicted, and others who have been imprisoned. Its work has focused on issues that disadvantage the poor or people of color, with particular emphasis on policies that foster hopelessness in communities that have been burdened and marginalized by the criminal justice system. EJI has frequently challenged and reported on the problems of poor prisoners and families resulting from excessive and costly telephone rates, which have blocked communication, undermined crucial support

needed by prisoners, and greatly contributed to the despair and frustration of many. It believes reform in this area is crucial to improve the effectiveness and rehabilitative potential of incarceration.

Established by the Vera Institute of Justice in 1973, the Legal Action Center ("LAC") is the only non-profit law and policy organization in the United States whose sole mission is to fight discrimination against people with criminal records, histories of addiction, or HIV/AIDS, and to advocate for sound public policies in these areas. Based in New York City, the LAC launched its National H.I.R.E. Network project in 2001 with a mission to increase employment opportunities for qualified people with criminal records by improving employment policies and practices and changing public opinion through advocacy and effective public policy campaigns. The LAC has found jobseekers with criminal records to face myriad barriers to entry into the labor force based on lack of identification, hard and soft skills, financial resources, work history and education. It opposes correctional policies that impose financial burdens on the families of incarcerated men and women because they strain family ties and add to the hurdles which former prisoners must overcome to become productive working and tax-paying members of society.

The NAACP Legal Defense and Educational Fund, Inc. ("LDF") is a non-profit corporation formed to assist African Americans in securing their rights by the prosecution of lawsuits. LDF has a long-standing concern with the criminal

justice system in general, and the rights and privileges of prisoners in particular. It litigated challenges to prison discipline in Sands v. Wainwright, 491 F.2d 417 (5th Cir. 1973); to prison mail censorship policies in Procunier v. Martinez, 416 U.S. 396 (1974); to prison overcrowding in Costello v. Wainwright, 430 U.S. 325 (1977), and Inmates of the Suffolk County Jail v. Eisenstadt, 518 F.2d 1241 (1st Cir. 1975); and to limitations on prisoner access to medical treatment in Costello, supra. Given its expertise, LDF believes its perspective would be helpful to the FCC in resolving the issues presented in this case.

The National Council of La Raza (NCLR) – the largest national Hispanic civil rights and advocacy organization in the United States – works to improve opportunities for Hispanic Americans. Through its network of nearly 300 affiliated community-based organizations (CBOs), NCLR reaches millions of Hispanics each year in 41 states, Puerto Rico, and the District of Columbia. To achieve its mission, NCLR conducts applied research, policy analysis, and advocacy, providing a Latino perspective in five key areas – assets/investments, civil rights/immigration, education, employment and economic status, and health. In addition, it provides capacity-building assistance to its Affiliates who work at the state and local level to advance opportunities for individuals and families.

The Osborne Association is New York's oldest organization continuously providing services to men and women affected by incarceration. Osborne's services, in three community sites and 17 prisons and jails, include discharge

planning and reentry support, drug treatment, risk reduction, parenting and family support, and employment and training. Osborne's Family Resource Center offers a toll free number to the families of men and women in prison, and attempts to assist people with the many challenges of having a loved one behind bars, including visiting faraway prisons and maintaining telephone contact.

The Real Cost of Prisons Project, based in Northampton, Mass., brings together justice activists, political economists, artists, policy researchers and people directly experiencing the impact of mass incarceration to create workshops and materials which explore both the immediate and long-term costs of incarceration on individuals, their families, communities, and the nation. The Real Cost of Prisons Project addresses a broad range of issues relating to incarceration, including obstacles faced by people who are incarcerated – especially women with children – in efforts to maintain meaningful family contact; the negative consequences for prisoners and their families of siting prisons far from urban areas; and hundreds of other challenges which hinder rather than help those coming home after incarceration.

Since its founding in 1844, The Women's Prison Association ("WPA") has provided social services to women involved in the criminal justice system to aid them in achieving law-abiding, self-sufficient, and rewarding lives in the community. Based in New York City, WPA provides direct assistance to more than 2,500 New York women and their families each year by offering an integrated

continuum of services in response to five key areas of need: livelihood, housing, family preservation, health and well-being, and criminal justice compliance. WPA works with women while they are incarcerated and in the community. Through its Institute on Women & Criminal Justice, the organization also seeks to help other jurisdictions deal with the dramatic increase in the number of incarcerated women—757% nationally since 1977; 17% in the five year period 1999-2004. WPA is particularly concerned about the hardship experienced by children of incarcerated parents and the caregivers of those children. Over 65% of incarcerated women have minor children at home, with an average of 2.4 children each. These children live with other family members, occasionally with their father, and with non-family caregivers. Expensive telephone bills create strains on these households. The WPA is aware of instances when efforts to maintain contact with an incarcerated person has resulted in the termination of phone service and/or an inability to pay other bills, sometimes even rent and utilities. Further, lack of contact can further damage children who have already experienced trauma and instability. Increased contact with an incarcerated parent can help children (and those who care for them) move ahead in constructive ways.

II. STUDIES OF RECIDIVISM UNIFORMLY DEMONSTRATE THAT PRISONERS WHO MAINTAIN CLOSE SOCIAL TIES ARE LESS LIKELY TO ENGAGE IN CRIME FOLLOWING RELEASE FROM CUSTODY

Prison telephone rate structures exist within the context of a broader correctional policy that includes the rehabilitation of offenders as an aim on the same footing as the deterrent and incapacitation functions of criminal law. Attention to family ties as an aspect of offender rehabilitation reflects the inescapable policy significance of an issue directly affecting nearly 675,000 persons released from prisons each year.² The cumulative meaning of this statistic is overwhelming: one Department of Justice study estimates that at year end 2001, 5.6 million Americans, and one in six African-American men, had been to prison.³

The import of these figures owes not simply to their sheer size, but to the disproportionate role of recidivist offenders in criminal activity. A study of data collected in thirteen states found that former prisoners have arrest rates between 18 and 26 times those of the general adult population.⁴

² See Paige M. Harrison & Allen J. Beck, Prison and Jail Inmates at Midyear 2005 (U.S. Dep't of Justice, Bureau of Justice Statistics, May 2006) (excerpt reproduced at A-1 in supplementary appendix submitted herewith) at 6 tbl.7 (reporting 672,202 prisoners released in 2004, an increase of 11.1 percent over 2000 figure).

³ See Thomas P. Bonczar, Prevalence of Imprisonment in the U.S. Population, 1974-2001 (U.S. Dep't of Justice, Bureau of Justice Statistics, Aug. 2003) at 1 unnumbered tbl. (excerpt reproduced at A-3 of supplementary appendix submitted herewith).

⁴ See Richard Rosenfeld et al., "The Contribution of Ex-Prisoners to Crime Rates," in Prisoner Reentry and Crime in America 80, 86 (Jeremy Travis & Christy Visser eds., 2005).

Against the backdrop supplied by the volume of offenders returning to their communities and their disproportionate role in crime, the issue of recidivism has received sustained and intensive attention. Research is unanimous in finding recidivism rates to be lower when prisoners remain in closer contact with family members during their terms of confinement.

Some thirty-five years ago, a state-sponsored study concluded:

The positive relationship between strength of social ties and success on parole has held up for 45 years of releases across very diverse offender populations and in different localities. It is doubtful if there is any other research finding in the field of corrections which can approximate this record.⁵

Authors Norman Holt and Donald Miller reproduced this finding once again by correlating the number of visits received by inmate subjects with the likelihood of their return to custody within one year.⁶ Even when controlling for factors such as immediate financial need and employment, the authors determined family ties to be of independent significance to the likelihood of a successful parole outcome.⁷ Indeed, "[i]n every comparison category, including those with 3 or more prior

⁵ Norman Holt & Donald Miller, Explorations in Inmate-Family Relationships (California Dep't of Corrections, Research Div. Research Report No. 46, Jan. 1972) [hereinafter "Holt and Miller"] (excerpts reproduced at A-5 to A-10 in supplementary appendix submitted herewith) at 61-62.

⁶ Id. at 42-43.

⁷ Id.

commitments, men with more family-social ties have had the fewest parole failures.”⁸

The robust results reported by Holt and Miller have in time made their research the most often cited evidence of the relationship between strong family ties and reduced recidivism.⁹ Yet, as Holt and Miller were the first to observe, an underlying research consensus can also be traced a further half century back. A study of Illinois parolees released between 1925 and 1935 found that inmates who had maintained an “active family interest” during their incarceration, as measured by the number of visits they received, were more than twice as likely to desist from crime as those who had no contact with family.¹⁰ Several decades later, the federal Bureau of Prisons commissioned an investigation which reproduced these results, finding prisoners who corresponded most frequently with family members had a 71 percent rate of success on parole, while those who did not communicate with relatives achieved only a 50 percent success rate.¹¹

⁸ Id., cited in Eva Lee Homer, “Inmate-Family Ties: Desirable but Difficult,” 43 Fed. Probation 47, 48 (1979).

⁹ See Creasie Finney Hairston, “Family Ties During Imprisonment: Important to Whom and for What?,” J. Soc. & Soc. Welfare, Mar. 1991, at 85, 97.

¹⁰ See Lloyd E. Ohlin, The Stability & Validity of Parole Experience Tables (Ph. D. diss., Univ. of Chicago, 1954) at appx. B tbl. 42, discussed in Daniel Glaser, The Effectiveness of a Prison and Parole System 366 (1964).

¹¹ See Glaser, supra note 10, at 366.

The Bureau of Prisons study also assessed the importance of strong familial relations subsequent to release, finding, for example, that recidivism was most common among releasees who lived alone,¹² a circumstance closely correlated with the strength of family ties due to a pronounced likelihood that parolees who lived with others did so with close relatives and spouses.¹³ The study also found that parolees who lived with family were less likely to recidivate insofar as their familial relations were comparatively free from discord.¹⁴ Nonetheless, even parolees whose home relations were characterized by some disharmony were more likely to desist from crime than those who moved away from home,¹⁵ suggesting that the preservation of at least a modicum of familial peace improved parole outcomes.

A 1968 to 1972 study examined a sample of Hawaii prisoners who, thanks to the island's small size, were almost as likely to receive visits as letters.¹⁶ The authors likewise found the extent of prisoners' contacts with family and friends to

¹² Id. at 379-80.

¹³ Id. at tbl.15.6.

¹⁴ Id. at 381, 384-85.

¹⁵ Id. at 387-88.

¹⁶ See Don Adams and Joel Fischer, "The Effects of Prison Residents' Community Contacts on Recidivism Rates," 22 Corrective and Soc. Psychiatry and J. of Behav. Tech. Methods and Therapy, No. 4, at 21, 22 (1976).

be closely enough associated with successful parole outcomes to warrant enlargement of programming that encouraged correspondence and visitation.¹⁷

The findings of these path-breaking studies have been reproduced by research employing a range of variables as proxies for the extent of prisoners' community and family contacts. A study commissioned by the Massachusetts Department of Correction documented significantly lower short- and long-term recidivism rates among men who participated in prerelease and home furlough programs that were "geared to maintain, to establish, or to reestablish general societal links such as family, economic, political, and social roles."¹⁸ At least one additional study has also found temporary release programs to have a positive impact.¹⁹ Similarly, correctional programming that brings family members closer to confined prisoners by permitting overnight visits has been found to correlate with lower rates of arrest following release.²⁰

A recent study of post-release social ties among former offenders in Ontario, Canada, documented results akin to those of the Bureau of Prisons study four

¹⁷ Id. at 26-27.

¹⁸ See Daniel P. LeClair, "The Effect of Community Reintegration on Rates of Recidivism: A Statistical Overview of Data for the Years 1971 Through 1983" (Mass. Dep't of Correction, Feb.-March 1986) (excerpts reproduced at A-11 to A-30 in supplementary appendix submitted herewith) at 2-3, 18-22 & tbls.8-10, 25-28 & tbls.12-13.

¹⁹ See James Howser & Donald MacDonald, "Maintaining Family Ties," Corrections Today, Aug. 1982, at 96-97, cited in Hairston, supra note 9, at 98.

²⁰ See Jules Quentin Burstein, Conjugal Visits in Prison: Psychological and Social Consequences (1977), cited in Hairston, supra note 9, at 98.

decades earlier.²¹ The authors sampled a total of 347 repeat offenders, the vast majority of whom had committed a new offense within one year of their most recent release.²² Compared with the small pool of offenders who had desisted from crime over the year studied, recidivists were less likely to be living with a nuclear family; less likely to be married; spent less time engaged in family activities; and were more likely to report interpersonal conflicts, which they also characterized as more serious in nature than did non-recidivists.²³

A spectrum of additional studies published in the 1980's and 1990's has lent further support to the research consensus.²⁴ In sum, these uniform findings bear out the conclusion stated by Creasie Finney Hairston, dean of the Jane Addams College of Social Work at the University of Illinois, that the "family ties-lower recidivism relationship has been consistent across study populations, different periods of time, and different methodological procedures."²⁵ Indeed, more than one study has pronounced the uniform results of this body of research to be

²¹ See Edward Zamble & Vernon L. Quinsey, The Criminal Recidivism Process (1997).

²² Id. at 16-20.

²³ Id. at 72-74 & tbl.4.2, 76 tbl.4.3.

²⁴ See Christy A Visser & Jeremy Travis, "Transitions from Prison to Community: Understanding Individual Pathways," 29 Ann. Rev. Soc. 89, 100 (2003) [hereinafter "Transitions from Prison to Community"] (citing ten studies "evidenc[ing] that inmates' family relationships and ties to those family members during prison improve postrelease outcomes").

²⁵ Hairston, supra note 9, at 98. Professor Hairston's deanship may be confirmed at the website of the Jane Addams College of Social Work, <http://www.uic.edu/jaddams/college/dean.html> (last visited Nov. 29, 2006).

“remarkable.”²⁶ Given this exceptional consistency, few measures are as promising as the nurture of inmates’ social ties as a means of reducing crime and promoting public safety.

III. CLOSER SOCIAL TIES ASSIST FORMER PRISONERS IN MANAGING A RANGE OF ISSUES WHICH MIGHT OTHERWISE PRECIPITATE A RETURN TO CRIME, WHILE ALSO MITIGATING THE EFFECTS OF INCARCERATION ON FAMILIES AND COMMUNITIES

In addition to confirming the importance of family ties by statistical means, scholars and professionals have developed a nuanced understanding of how these ties achieve their positive impact. A common thread running through the studies is the recognition of family and other intimate relations as a critical source of both tangible and intangible support in former prisoners’ encounters with a range of unique challenges confronting them upon release. Phone calls emerge in the literature as an important – indeed, generally the most important – means by which prisoners preserve, through often lengthy terms of confinement, the support structure that offers the best hope of sustaining them when at last they return home.

A. Social Ties Are Often Former Prisoners’ Primary or Only Means of Satisfying Basic Needs

To begin with the tangible benefits of inmates’ family ties, it is necessary to look no further than housing. Finding a home is inevitably among the foremost

²⁶ Rebecca L. Naser & Christy A. Visher, “Family Members’ Experiences with Incarceration and Reentry,” 7 W. Criminology Rev. 20, 21 (2006); Nancy G. La Vigne et al., “Examining the Effect of Incarceration and In-Prison Family Contact on Prisoners’ Family Relationships,” 21 J. Contemp. Crim. Justice 314, 316 (2005).

concerns of prisoners during the period immediately following their release from confinement.²⁷ Notably, this is the same interval during which recidivism rates are highest.²⁸ Yet housing is a perennial difficulty for former prisoners, more than ten percent of whom have been found to experience homelessness shortly after release.²⁹ Those who do establish a stable residence overwhelmingly rely on immediate family members to take them in.³⁰

Given prisoners' difficulty in locating housing and their usual need of help from family members, it is not surprising that inmates with stronger family ties,

²⁷ See Jeremy Travis, But They All Come Back: Facing the Challenges of Prisoner Reentry [hereinafter But They All Come Back] 219 (2005); Glaser, supra note 10, at 371-72 tbl.15.4 (documenting increase, as release date approached, in share of prisoners who identified housing as primary type of assistance expected from close relatives).

²⁸ See Patrick A. Langan & David J. Levin, Recidivism of Prisoners Released in 1994 (U.S. Dep't of Justice, Bureau of Justice Statistics, June 2002) (excerpts reproduced at A-31 to A-34 of supplementary appendix submitted herewith) at 3 & fig.1 (finding that, of all prisoners rearrested within three years of release, nearly two-thirds were arrested during first year alone); Adams and Fischer, supra note 16, at 22 (reporting that recidivism may be assessed nearly as accurately at two years after release as at ten years).

²⁹ See Stephen Metraux & Dennis P. Culhane, "Homeless Shelter Use and Reincarceration Following Prison Release," 3 Criminology & Pub. Pol'y 139, 144 (2004) (finding that 11.4 percent of cohort of 48,424 New York State prisoners released to New York City between 1995 and 1998 entered homeless shelters within two years); cf. Zamble & Quinsey, supra note 21, at 36 ("most" individuals within sample of 311 recidivists lived in "temporary accommodations" at time of survey).

³⁰ See Marta Nelson et al., "The First Month Out: Post-Incarceration Experiences in New York City" (Vera Inst. for Justice, Sept. 1999) [hereinafter "The First Month Out"] (reproduced at A-35 to A-70 in supplementary appendix submitted herewith) at 8 (finding that roughly eighty percent of sample of New York State prisoners returning to New York City were living with a family member two days following release); "Understanding the Challenges of Prisoner Reentry: Research Findings from the Urban Institute's Prisoner Reentry Portfolio" (Urban Institute, Justice Pol'y Ctr., Jan. 2006) (excerpt reproduced at A-71 to A-76 of supplementary appendix submitted herewith) at 8 (finding between 60 and 88 percent of prisoners returning to communities in Illinois, Maryland, Ohio, and Texas to live with or anticipate living with family members upon release).

and hence better prospects of finding a home, are more likely to make a successful reentry.³¹ In light of this dynamic, one research team's characterization of familial support as of "make or break" significance to successful reentry is apt.³²

A second tangible respect in which inmates who preserve close family ties find themselves comparatively well situated upon release is in employment opportunities. Finding a job is critical for successful reentry not only because it provides much-needed income, but also because employment has been strongly linked to reductions in criminal behavior. Through work opportunities, offenders establish positive relationships with co-workers that can serve as "informal social controls" encouraging the development of a law-abiding identity.³³

Among a cohort of prisoners returning to New York City in 1999, fully one-third of those who had found employment within a month of release located those jobs through family or friends.³⁴ The other two-thirds, notably, were able to call upon former employers themselves,³⁵ thus evidencing the significance of an

³¹ See "The First Month Out," supra note 30, at 9 & n.4 (observing markedly higher rate of absconding from parole supervision among releasees who lived in homeless shelter following release).

³² "The First Month Out," supra note 30, at 1; see also Eric J. Wodahl, "The Challenges of Prisoner Reentry from a Rural Perspective," 7 W. Criminology Rev. 32, 35 (2006) (citing additional study characterizing housing as "the lynchpin that holds the reintegration process together").

³³ See Christopher Uggen et al., "Work and Family Perspectives on Reentry," in Prisoner Reentry and Crime in America, supra note 4, at 210-15.

³⁴ See "The First Month Out," supra note 30, at 14.

³⁵ Id.

additional set of social contacts which, to the extent prisoners are able to preserve them, improve the prospects of a successful reentry.³⁶

Less tangible dimensions of family support also play an important role in prisoners' successful reintegration. A struggle common to as many as 80 percent of former prisoners is that of recovering from a history of drug and alcohol abuse.³⁷ In this endeavor, family ties have been found to be associated with a greater likelihood of success.³⁸ The positive impact of such ties may operate by means of family members' informal monitoring,³⁹ as well as by giving a former substance abuser a stake in conventional social roles that lead him or her to regard the costs of a return to abuse as more significant.⁴⁰ Individual accounts of family members

³⁶ Similarly, a survey of the family members of prisoners returning to Chicago determined that one in five family members helped their recently incarcerated relative locate employment. See Naser & Visser, supra note 26, at 26; see also "Transitions from Prison to Community," supra note 24, at 97 (collecting additional studies finding returning prisoners unlikely to "find jobs on their own, but rather [to] turn to family, friends, and former employers for help").

³⁷ See National Governors Ass'n, "Issue Brief: Improving Prisoner Reentry Through Strategic Policy Innovations" (Sept. 2005) (reproduced at A-77 to A-92 of supplementary appendix submitted herewith) at 4; "HUB System: Profile of Inmate Population Under Custody on January 1, 2006" (New York State Department of Correctional Services, June 2006) (excerpt reproduced at A-93 to A-102 of supplementary appendix submitted herewith) at ii (finding 71.9 percent of New York State inmates in custody as of January 1, 2006, to self-report history of substance abuse).

³⁸ See Mike Bobbitt & Marta Nelson, "The Front Line: Building Programs that Recognize Families' Role in Reentry" (Vera Inst. of Just., Sept. 2004) (excerpt reproduced at A-103 to A-106 of supplementary appendix submitted herewith) at 2.

³⁹ See Carol Shapiro & Meryl Schwartz, "Coming Home: Building on Family Connections," 5 Corrections Mgmt. Q., No. 3, at 52, 55-59 (2001) at 58.

⁴⁰ See Bobbitt & Nelson, supra note 38, at 2 (reporting survey of former prisoners whose motivation to desist from substance abuse owed to wish "to retain the good opinion of their families," which they "feared losing... if they resumed using drugs").

who accompany newly released prisoners to support groups, or simply on neighborhood outings which might otherwise occasion temptation,⁴¹ afford a sense of the real effect of meaningful family ties in promoting desistance from crime.

Finally, successful reentry has been associated with more diffuse forms of emotional support for which prisoners commonly turn to their family and friends. One study of prisoners' emotional state upon reentry found that "postrelease depression and, conversely, emotional adjustment following release from prison depend in large measure on the availability of supportive, bridging interpersonal networks."⁴² Survey evidence indicates family members to be overwhelmingly ready and willing to provide this emotional care, often exceeding even the high expectations of returning prisoners.⁴³

The availability of emotional support takes on additional significance upon consideration of the extent of mental illness among returning prisoners, who have been estimated to suffer mental disorders at more than five times the rate in the general population.⁴⁴ Between ten and 20 percent of all prisoners suffer from a

⁴¹ See "The First Month Out," supra note 30, at 10.

⁴² Sheldon Ekland-Olson et al., "Postrelease Depression and the Importance of Familial Support," 21 Criminology 253, 271 (1983).

⁴³ See Naser & Visser, supra note 26, at 26 (reporting survey results that showed more than eighty percent of family members to regard as "pretty or very easy" the provision of emotional support to relative returning home from prison); cf. Glaser, supra note 10, at 367 tbl.15.2, 369 (more than half of prisoners expected to rely on immediate family for support upon release).

⁴⁴ See Terry A. Kupers, Prison Madness: The Mental Health Crisis Behind Bars and What We Must Do About It 11 (1999).

mental disorder serious enough to require intensive treatment during a single year.⁴⁵ Against the size of this population must be considered the paucity of treatment programs available to parole administrators.⁴⁶ While family and friends may be no substitute for professional help, the positive impact of intimates' support on prisoners' capacity to cope with depression⁴⁷ indicates that at least some ameliorative impact may be achieved by correctional policies that permit prisoners more opportunity to preserve familial and social ties during incarceration.

B. Preservation of Prisoners' Social Ties Is of Critical Importance to a Sizable Population of Children

Policies that sustain prisoners' pre-incarceration ties help not only prisoners, but the family members on whom they rely. Children of incarcerated parents have been observed to experience myriad negative effects of potentially long-lasting consequence in connection with the loss of a primary caregiver, financial support, and critical emotional contact.⁴⁸ Correctional policies that facilitate positive

⁴⁵ Id.; see also Zamble & Quinsey, supra note 21, at 34-35 & tbl.3.1 (finding 61.2 percent of sample of recidivists to self-report history of psychological problems and 20 percent to report prior attempt of suicide).

⁴⁶ See Joan Petersilia, "From Cell to Society: Who Is Returning Home?," in Prisoner Reentry and Crime in America, supra note 4, at 15, 32 (citing 1995 survey finding 75 percent of parole administrators to report lack of special programs for mentally ill clients).

⁴⁷ See Sheldon Ekland-Olson et al., supra note 42, at 271.

⁴⁸ See generally "The Effects of Parental Incarceration on Children: Perspectives, Promises, and Policies," in Prisoners Once Removed: The Impact of Incarceration and Reentry on Children, Families, and Communities (Jeremy Travis & Michelle Waul eds., 2003); see also But They All Come Back, supra note 27, at 119-20, 126-31 (describing financial stress, emotional and behavioral problems, and social stigma experienced by some children of incarcerated parents).

interaction between the incarcerated and their family members can help mitigate this harm.⁴⁹ The significance of this beneficial effect is immediately apparent on consideration of the number of prisoners who are parents: a 1999 survey found a majority of prisoners to have at least one child under the age of 18, summing to approximately 1.5 million children with parents behind bars.⁵⁰

C. Preservation of Prisoners' Social Ties May Mitigate the Cumulative Impact of Incarceration on Communities That Are Home to a Disproportionate Share of Persons in State Custody

At a broader level, the reduced crime and stronger families achieved by correctional policies that preserve pre-incarceration ties promote the vital interests of neighborhoods and communities from which a disproportionate share of prisoners are drawn.

A study of Brooklyn, New York, has dramatically illustrated the concentration of incarceration's effects by plotting the location of census tracts that are home to higher-than-usual numbers of persons removed for and returning from confinement: a sizable majority of all such tracts cluster in the borough's east-central region.⁵¹ These same neighborhoods were likewise characterized by high

⁴⁹ See Prisoners Once Removed, *supra* note 48, at 20-22, 250; But They All Come Back, *supra* note 27, at 134-35 (explaining that meaningful contact between incarcerated parents and their children can be of help to both).

⁵⁰ Christopher J. Mumola, Incarcerated Parents & Their Children (U.S. Dep't of Justice, Bureau of Justice Statistics, Aug. 2000) (excerpt reproduced at A-107 of supplementary appendix submitted herewith) at 1.

⁵¹ See Eric Cadora et al., *supra* note 48, at 299 fig.9.9, 303 fig.9.12, 306 fig.9.14a.

percentages of single-parent households and residents receiving public assistance, as well as elevated rates of violent crime.⁵²

The same pattern has been observed throughout the country. Nationwide, roughly two-thirds of all persons released from state prison in 1996 returned to the central city of a metropolitan area.⁵³ In Cuyahoga County, which encompasses the City of Cleveland, three percent of 1,500 block groups accounted for twenty percent of the State of Ohio's prisoners.⁵⁴ In Tallahassee, more than three-quarters of neighborhoods each received no more than 30 of the prisoners released between 1994 and 2002, whereas five percent of neighborhoods received more than 150 prisoners each.⁵⁵ Studies of prisoners returning to Chicago, Baltimore, Boston, Richmond, and Detroit have in each instance found between one-third and one-half of former prisoners to return to neighborhoods comprising no more than fifteen percent, and as little as seven percent, of the cities of which they are part.⁵⁶

Negative stigma associated with incarceration has been observed to lead prisoners' close relations to retreat from social networks on which they would

⁵² Id. at 294, 296-97, 301, 307, figs. 9.4, 9.6, 9.7, 9.10b, 9.14b.

⁵³ See James P. Lynch & William J. Sabol, "Prisoner Reentry in Perspective" (Urban Inst., 3 Crim. Policy Rep., Sept. 2001) (excerpt reproduced at A-109 to A-120 of supplementary appendix submitted herewith) at 15.

⁵⁴ Id. at 16.

⁵⁵ See Todd R. Clear et al., "Communities and Reentry: Concentrated Reentry Cycling," in Prisoner Reentry and Crime in America, supra note 4, at 179, 197.

⁵⁶ See "Understanding the Challenges of Prisoner Reentry," supra note 30, at 14.

otherwise rely.⁵⁷ Along with the disruption which incarceration directly causes by constantly removing and returning a share of residents, the cumulative effect of these retreats from neighbors can weaken social networks themselves, ultimately impairing the community's capacity to summon collective energies toward shared ends.⁵⁸ The result may be a further intensification of the social ills already associated with concentrated poverty: heightened crime rates, loss of employment, and strain upon social service providers.⁵⁹

While overcoming this cycle will likely require fundamental shifts in social policy, simple adjustments in corrections practices are also of some value. Policies that help preserve prisoners' intimate relations within their home communities are a means of solidifying the "strong ties" that are a necessary, if not always sufficient, basis of a community's capacity for collective action.⁶⁰ Prisoners who maintain community ties with former employers succeed also in preserving the

⁵⁷ See Dina Rose et al., Drugs, Incarceration and Neighborhood Life: The Impact of Reintegrating Offenders into the Community (Final Grant Report to National Inst. of Justice, Doc. No. 195173, July 3, 2002) (excerpts reproduced at A-121 to A-130 of supplementary appendix submitted herewith) at 173.

⁵⁸ See Clear, et al., supra note 55, at 193-94.

⁵⁹ See Dina R. Rose & Todd R. Clear, "Incarceration, Reentry and Social Capital: Social Networks in the Balance," in Prisoners Once Removed, supra note 48, at 313, 324-26; Shelli Balter Rossman, "Building Partnerships to Strengthen Offenders, Families, and Communities" in Prisoners Once Removed, supra note 48, at 343, 345; "Transitions from Prison to Community," supra note 24, at 103 (discussing studies). A difficulty in assessing the hypothesis that removal and return of a disproportionate share of residents exacerbates social ills in certain communities is insufficient longitudinal data measuring the pertinent factors over a period of time. See id. at 104.

⁶⁰ See Clear et al., supra note 55, at 188-91.

“weak ties” which sociologists have found essential to the vibrancy of social networks and efficacy of informal norms.⁶¹ In both respects, the preservation of inmates’ pre-incarceration ties figures within the sociology of mass incarceration as a simple means of fighting the exacerbation of social ills caused by the disproportionate selection of prisoners from a limited number of communities. The beneficiaries of informed corrections policy thus include not only prisoners themselves, but their neighbors and, ultimately, the public as a whole.

IV. TELEPHONE CALLS ARE ESSENTIAL TO PRISONERS’ PRESERVATION OF SOCIAL TIES

While it is clear that prisoners’ pre-incarceration social ties are critical to successful reentry, prisoners face a number of dilemmas in efforts to sustain these relations by means other than telephone calls.

Perhaps the foremost challenge confronting prisoners is the distant location of correctional facilities, which dramatically constrains visiting opportunities. The scale of these distances is illustrated by a study finding that female inmates in federal prisons in the western part of the United States were, on average, confined more than 500 miles from their homes. See John C. Coughenour, “Separate and Unequal: Women in the Federal Criminal Justice System,” 8 Fed. Sentencing Rep. 142 (1995). Men were on average confined more than 300 miles away. Id.

⁶¹ See id. at 188, 193.

Those family members lucky and stalwart enough to manage visits often encounter exasperating difficulties once they arrive. While the nature of these obstacles is largely anecdotal, a compelling portrait is framed by the final report of an intensive study conducted in Florida in 1998 by a state legislative committee.⁶² The investigation found visiting policies and schedules commonly varied from one facility to another, resulting in upended expectations whenever a relative was transferred.⁶³ Arbitrary application of rules which vested correctional staff with broad discretion was also observed to interfere with visitation.⁶⁴ A common, if not predominant, complaint was of discourtesy toward visitors on the part of correctional staff.⁶⁵ The failure to provide family members with information regarding visitation policies also appears to be a recurrent problem in jurisdictions throughout the United States.⁶⁶

⁶² See Florida House of Representatives, Justice Council, Committee on Corrections, Maintaining Family Contact When a Family Member Goes to Prison (Nov. 1998) (excerpts reproduced at A-131 to A-160 of supplementary appendix submitted herewith).

⁶³ Id. at 4 (Findings 11 and 12).

⁶⁴ Id. at 4 (Finding 12); § VII.C.1, pp. 28-29.

⁶⁵ Id. at 4-5 (Findings 14 and 16); § VII.C.6, p. 51.

⁶⁶ See Creasie Finney Hairston, "Families, Prisoners, and Community Reentry: A Look at Issues and Programs," in Vivian L. Gadsden, ed., Heading Home: Offender Reintegration into the Family (American Correctional Ass'n, 2003) at 18 ("Practices regarding acceptable identification, clothing, and searches vary from one prison to another and sometimes from one visit to another, creating humiliation, confusion, and frustration for adults and children visitors alike.").

Not only are prisons distant and visitation frequently compromised, but written correspondence is often of little utility to prisoners who strive to keep up their pre-incarceration ties. Literacy rates among prisoners are significantly lower than among the population as a whole.⁶⁷ Those prisoners who formally qualify as literate are in many instances incapable of fully expressing themselves in writing,⁶⁸ and even prisoners who have achieved a meaningful degree of literacy are no better able to communicate with minor children who are themselves unable to read and write skillfully. Finally, the review of prisoners' mail by corrections officials undoubtedly limits the candor of correspondents' self-expression.⁶⁹

In light of the remote location of many correctional facilities, restrictive and sometimes arbitrarily enforced visitation policies, and broad illiteracy among inmates, telephone communications are essential to the nurture of intimate relationships which incarceration might otherwise rend. Cf. Overton v. Bazzetta, 539 U.S. 126, 135 (2003) (recognizing availability of telephone calls as material factor in upholding challenged restrictions on prison visitation). The significance of telephone communications, as a matter of constitutional law, has been

⁶⁷ Jeremy Travis & Michelle Waul, "Prisoners Once Removed: The Children and Families of Prisoners," in Prisoners Once Removed, supra note 48, at 11; National Governors Ass'n, supra note 37, at 5 (reporting "roughly half" of returning offenders to be functionally illiterate).

⁶⁸ See "HUB System: Profile of Inmate Population Under Custody on January 1, 2006," supra note 37, at 45 (reporting that roughly one third of New York State inmates read at below a ninth grade level, and one fifth of inmates below a sixth grade level); Hairston, supra note 66, at 19.

⁶⁹ Glaser, supra note 10, at 363.

recognized by federal court decisions holding that restrictions on prisoners' telephone access must be reasonably related to legitimate penological aims. Washington v. Reno, 35 F.3d 1093, 1100 (6th Cir. 1994); Tucker v. Randall, 948 F.2d 388, 391 (7th Cir. 1991).

Surveys conducted in numerous jurisdictions have consistently found that prisoners rely on telephone calls far more commonly than visits as a means of preserving contacts with their family members and intimate partners. In Florida, 68 percent of family members received calls from a confined relative at least once a week, while fewer than 42 percent visited with equivalent frequency.⁷⁰ In the Chicago area, a survey found an even more dramatic disparity: while a majority of family members communicated with their incarcerated relatives by telephone and mail, more than two-thirds were unable to make a single visit.⁷¹ Even in as relatively small a state as New Jersey, 41 percent of inmates did not receive a

⁷⁰ Maintaining Family Contact When a Family Member Goes to Prison, *supra* note 62, at § V, p. 20; appx.1 (Q4 and Q8). The 42-percent figure stated in the text in all likelihood substantially overstates the percentage of family members who visited Florida inmates at least once a month, as it includes the 15 percent of family members who reported visiting with a frequency "other" than weekly, twice-monthly, monthly, or semi-annually. *Id.* at appx.1 (Q4). Given that 86 percent of family members expressed a wish to be able to visit their incarcerated relatives more frequently, *id.* (Q5), and that respondents as a whole lived, on average, 158 miles from the facility where their loved one was confined, *id.* (Q11), it is reasonable to presume that most of this 15 percent in fact visited less than semi-annually. Thus, the Florida survey results can be read to indicate that only 27 percent of family members visited an incarcerated relative on a weekly basis, as compared with the 68 percent who communicated by telephone with that often.

⁷¹ Naser and Visser, *supra* note 26, at 24-25.

single visit over the course of a year.⁷² Nationwide, a Department of Justice survey found that 42 percent of incarcerated fathers and 53 percent of mothers spoke by telephone at least once each month with a child,⁷³ surpassing the frequency of visits by a factor of two to one.⁷⁴

The high price of telephone calls under the present rate structure means that prisoners and their family members must not only endure financial sacrifice, but may also be required to make trade-offs between communicating with a loved one and a lawyer. Simply receiving status reports as to direct appeals and/or post-conviction proceedings may impose substantial costs. And though the right to counsel under the Fifth and Sixth Amendments hangs in the balance, it can prove impossible for attorneys to communicate satisfactorily with clients on matters integral to representation, such as the potentially adverse consequences of pursuing a particular argument on appeal, or the client's knowledge of newly discovered facts material to a post-conviction application. Moreover, to the extent costs of telephone communications are shouldered by the institutional defenders or pro bono counsel who frequently represent prisoners,⁷⁵ the present rate structure draws

⁷² Gresham M. Sykes, The Society of Captives 65 (1958), quoted in Glaser, supra note 10, at 363.

⁷³ Mumola, supra note 50, at 1.

⁷⁴ Id.

⁷⁵ Cf. American Bar Ass'n, Criminal Justice Section, Report (Aug. 2005) (reproduced at A-161 to A-168 of supplementary appendix submitted herewith) at 4 (noting that "[w]hen attorneys are

upon the already strained resources allocated to indigent defense⁷⁶ to subsidize a corrections budget that enjoys the steady support of annual legislative appropriations.

Families' subjective accounts of their experience speak to the dilemmas posed by inflated telephone charges. In Florida, five of the twelve suggestions most commonly articulated by family members invited to submit comments on correctional policies were addressed to telephone calls, with cost most commonly cited as in need of reform.⁷⁷ In New York, the plainspoken pleas of residents give meaning to statistics documenting the extent of prisoners' reliance on telephone calls. "I have to give up a lot to pay the phone bill," the wife of a Buffalo prisoner told The New York Times. "But I think it is important that the children have contact with their father."⁷⁸ The wife of another prisoner told The New York Sun

able to accept prisoner calls, the high cost... cuts into the attorneys' budgets, making it difficult for them to afford other items necessary to their clients' defense").

⁷⁶ See Commission on the Future of Indigent Defense Services, Final Report to the Chief Judge of the State of New York, June 18, 2006, at 17 (reporting determination that "New York's indigent defense system... suffers from an acute and chronic lack of funding," causing "a deleterious impact on all aspects of indigent defense representation").

⁷⁷ Maintaining Family Contact When a Family Member Goes to Prison, supra note 70, at appx.1 (Q24).

⁷⁸ See John Sullivan, "New York State Earns Top Dollar From Collect Calls by Its Inmates," N.Y. Times, Nov. 30, 1999, at A1 (reproduced at A-169 to A-170 of supplementary appendix submitted herewith) (reporting on prisoner whose only means of contact with dying relative was telephone call, and quoting family members who estimated cost of telephone communications with incarcerated relatives at hundreds of dollars each month).

of \$150 monthly phone bills, but explained that “without the phone calls, the distance between us seemed to grow.”⁷⁹

In sum, the quantitative and qualitative evidence of the significance of telephone communications amply support Dean Hairston in her opinion that for prisoners, telephone calls are, simply, “vital to maintaining family bonds.”⁸⁰

V. THE IMPORTANCE OF PRISON TELEPHONE COMMUNICATIONS HAS OCCASIONED CALLS FOR REFORM

The unanimous conclusions of recidivism research, along with the manifest significance of telephone communications to prisoners, have prompted corrections professionals and lawmakers to join in seeking reform.

Perhaps the longest standing recognition of the role of telephone communications in prisoners’ lives is a formally promulgated rule of the federal Bureau of Prisons, which oversees federal correctional facilities throughout the country. Effective since 1994, the agency regulation provides that “[t]elephone privileges are a supplemental means of maintaining community and family ties that will contribute to an inmate’s personal development.” 28 C.F.R. § 540.100; 59 Fed. Reg. 15812, 15824 (Apr. 4, 1994).

⁷⁹ See Catriona Stuart, “Wives See Wrong Numbers on Phone Bills for Inmates,” N.Y. Sun, Jan. 21, 2005 (reproduced at A-171 to A-174 of supplementary appendix submitted herewith).

⁸⁰ Decl. of Dr. Creasie Finney Hairston (March 8, 2004), submitted in Matter of Implementation of Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, F.C.C. Doc. No. 96-128 at ¶ 25 (reproduced at A-175 to A-184 in supplementary appendix submitted herewith).

The federal bureau's attention to telephone communications has of late met with wide-ranging agreement in the corrections field. On February 1, 2006, the American Correctional Association ("ACA") amended a formal policy statement recognizing that "offenders should have access to a range of reasonably priced telecommunications services."⁸¹ As a component of the broad access contemplated by the standard, the ACA directs that rates should be "commensurate with those charged to the general public for like services"; that "[a]ny deviation from ordinary consumer rates should reflect actual costs associated with the provision of services in a correctional setting"; and that contracts should "provide the broadest range of calling options determined to be consistent with the requirements of sound correctional management."⁸²

A national commission charged with investigating prison violence also recently urged that the cost of telephone calls be minimized.⁸³ The commission, co-chaired by former U.S. Circuit Judge John J. Gibbons and former Attorney General Nicholas de B. Katzenbach, concerned itself with telephone communications after concluding that prison violence was often a function of

⁸¹ See American Correctional Ass'n, Policy Statement: Public Correctional Policy on Adult/Juvenile Offender Access to Telephones (reproduced at A-185 of supplementary appendix submitted herewith).

⁸² Id.

⁸³ See Commission on Safety and Abuse in America's Prisons, Report: Confronting Confinement (Vera Institute of Justice, June 2006) (excerpt reproduced at A-187 to A-204 of supplementary appendix submitted herewith) at 37.

social dislocation experienced as a result of the remote location of prisons, a failure to locate prisoners as close to home as possible, and visitation policies subjecting prisoners' contacts to inconvenience and indignity.⁸⁴ Observing that many state prisons charge inflated telephone connection rates, the commission specifically recommended that such policies be discarded due to their "interfere[nce] with the maintenance of critically important family and community ties."⁸⁵

As officers of the courts which superintend state and federal prison systems, attorneys have likewise recognized the importance of affordable prison telephone communications. In 2005, the American Bar Association adopted a recommendation encouraging corrections administrators "to offer telephone services in the correctional setting with an appropriate range of options at the lowest possible rates."⁸⁶ An accompanying report prepared by the association's Criminal Justice Section observes that "[t]elephone access can be a critical component of a prisoner's successful transition to a productive, law-abiding life after leaving prison."⁸⁷ The ABA also criticized the toll which an inflated rate structure imposes upon the attorney-client relationship, criticizing "policies that... unreasonably limit the availability of permissible unmonitored calls" and thereby

⁸⁴ Id.

⁸⁵ Id.

⁸⁶ American Bar Ass'n, supra note 75, at 1.

⁸⁷ Id. at 2.

“threaten fundamental rights regarding the effective assistance of counsel and access to the courts.”⁸⁸

The consensus among scholars and corrections professionals is now meeting with attention from lawmakers. On January 8, 2007, just one week after being inaugurated at the 54th Governor of New York, Eliot Spitzer directed the New York Department of Correctional Services to reduce excessive telephone charges paid by the families of inmates at state facilities by eliminating the commissions paid to the Department, and thereby reducing the cost of those calls by at least 50 percent, thus “allowing families to maintain contact with their loved ones without the undue financial burden of a State commission on the rate.”⁸⁹

New York lawmakers are not alone. Congress has considered legislation which would require that prisons promote telephone communications between inmates and their families. See Family Telephone Connection Protection Act of 2005, H.R. 4466, 109th Cong. § 3(b) (2005). Pending federal legislation would appropriate new funds for research and pilot projects designed to evaluate characteristics shared by former prisoners who do not engage in recidivism, including, specifically, “family connection.” See Second Chance Act of 2007, H.R. 1593, 110th Cong. § 241(a)(3) (2007); S. 1060, 110th Cong. § 241(a)(3)

⁸⁸ Id. at 3.

⁸⁹ See, “Phone Charges to be Reduced for Families of Inmates,” Governor’s Press Release, Jan. 8, 2007, (reproduced at A-205 of supplementary appendix submitted herewith.)

(2007). Federal executive departments have already directed substantial sums to reentry projects in connection with a \$300 million initiative proposed by the President in his 2004 State of the Union Address.⁹⁰

CONCLUSION

For the reasons stated in the foregoing, The Sentencing Project and ten other organizations respectfully urge the Commission to adopt the proposals of the Second Wright Petition to establish benchmark rates for long distance prison inmate calling services, and require prison telephone service providers to offer debit calling options.

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Respectfully submitted,



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⁹⁰ See Address Before a Joint Session of Congress on the State of the Union, 40 Weekly Comp. Pres. Doc. 94, 101 (Jan. 20, 2004); U.S. Dep't of Justice, Bureau of Justice Assistance, FY 2006 Prisoner Reentry Initiative Grant Awards (reproduced at A-206 to A-209 of supplementary appendix submitted herewith) (enumerating awards to state correctional agencies totaling more than \$13.3 million).